

WETLANDS COUNCIL MEETING MINUTES

November 12, 2019

The Wetlands Council met on Tuesday, November 12, 2019 in Rooms 112, 113, 114 at the NH Department of Environmental Services, 29 Hazen Drive, Concord, NH.

Attendees: Chairman Chip Kimball, Councilors Matthew Bosiak, Lee Carbonneau, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre

Absentee: Councilors Wendy Weisiger, Carol Henderson, Gretchen Young, Seth Prescott

Clerks: Sarah Richos, Council Clerk; Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order at 9:05 am by Chairman Kimball with introductions. Quorum present.

1. **APPROVAL OF MINUTES:** Discussion held. Amendment to Docket No. 19-15 WtC – Town of Ossipee – time of prehearing conference changed. Amendment to Old Business; punctuation added. Motion made by Councilor Carbonneau to approve the October 8, 2019 meeting minutes as amended, Councilor Mellor seconded. Motion passed by Council without dissent.
2. **PUBLIC INPUT:** There was no public input presented before the Council.
3. **STATUS OF APPEALS:** Paula Scott, Appeals Clerk

I. NEW APPEALS

There were no new appeals brought before the Council.

II. DECISIONS TO BE WRITTEN. FINALIZED. ISSUED.

Docket No. 18-13 WtC – William R. Davis Appeal

Subject: 9/5/18 Approval of Wetlands Permit #2018-01848 issued to Kimberly A. Wesson Revocable Trust

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: October 5, 2018 received Petition for Appeal. 10/9/18 issued Insufficient Appeal letter. November 8, 2018 received Supplemental to Petition for Appeal. 11/9/18 issued Receipt of Revised Appeal letter. Council to accept or dismiss Appeal at today's meeting. Discussion was held. Motion to Deny was passed on 12/11/18. 12/12/18 issued Ruling denying Acceptance of Appeal. January 11, 2019 received Motion for Reconsideration. Discussion was held. February 12, 2019 Council granted Motion for Reconsideration. 2/14/19 issued ruling granting Motion for Reconsideration. 2/25/19 issued Notice of Pre-Hearing Conference scheduled for March 18, 2019 at 9 a.m. March 18, 2019 issued Pre-Hearing Order scheduling hearing for June 11, 2019 at 9 a.m. May 13, 2019 received Appellant's Witness and Exhibit List. Hearing is today at 9 a.m. Hearing and deliberations held June 11, 2019. Council voted to deny the Appeal. Order to be issued within 90 days. September 24, 2019

issued Decision and Order on Petition for Appeal. 10/24/19 received Motion for Reconsideration. 11/12/19 No objection filed against Motion for Re-Consideration. Discussion held. Motion made by Councilor Klass to deny Motion for Reconsideration, Councilor St. Pierre seconded. Councilors Bosiak, Klass, St. Pierre, Carbonneau, Lievens voted in favor, Chairman Kimball opposed.

III. HEARINGS OR PHCs PENDING

Docket No. 18-15 WtC – Nancy Hall and Edward Benway, Trustee Appeal

Subject: 9/18/18 Administrative Order No. 18-015 WD

Hearing Officer: December 17, 2018 David Conley was appointed by AG

Status: October 18, 2018 received Petition for Appeal. 10/19/18 issued Receipt of Appeal Letter. Council to accept or dismiss Appeal at today's meeting. Appeal was accepted on December 11, 2018. 12/12/18 issued Appeal Accepted letter. January 4, 2019 issued Notice of Pre-Hearing Conference scheduled for January 28, 2019 at 1 p.m. 1/18/19 received Motion to Continue Pre-Hearing Conference. 1/23/19 received Appearance from Collis Adams and issued Letter granting Motion to Continue PHC rescheduling it for May 6, 2019 at 10 a.m. May 1, 2019 received Assented-to Motion to Continue Pre-Hearing Conference. 5/2/19 issued ruling granting Assented-to Motion to Continue Pre-Hearing Conference and rescheduled it to June 10th at 8:30 a.m. June 3, 2019 received Assented-To Motion to Continue Pre-Hearing Conference. 6/6/19 issued letter granting Assented-To Motion to Continue PHC and rescheduling it for September 12th at 9 a.m. September 9, 2019 received Appearance of Atty. Kerry Barnsley for the Department and Assented-to Motion to Continue. 9/10/19 granted Assented to Motion to Continue. 10/11/19 received Settlement Agreement.

Docket No. 19-08 WtC – Deborah Forte and William Ranney Appeal

Subject: 5/8/19 Amended Shoreland Permit #2016-01071 issued to Richard Jones

Hearing Officer: August 21, 2019 David Conley was appointed by AG.

Status: June 7, 2019 received Petition for Appeal. 6/10/19 issued Insufficient Appeal letter. 6/27/19 received Appearance of Atty. John Cronin for the permittee. July 1, 2019 received revised Petition for Appeal and issued receipt of revised Appeal letter. 7/29/19 received Motion to Intervene. Council to accept or decline Appeal today 8/13/19. Appeal was accepted on August 13, 2019. 8/14/19 issued Appeal accepted letter. September 3, 2019 issued Notice of Pre-Hearing Conference scheduled for September 25th at 9 a.m. 9/5/19 received Appearance of Atty. Heather Neville for the Department. 9/25/19 Pre-Hearing Order scheduled hearing for 11/12/19 at 9 am. October 18, 2019 received Appellants', Intervenor's and NHDES' Witness and Exhibit Lists; Motion for Summary Judgment and Affidavit in Support of Motion for Summary Judgment. 10/22/19 received Motion to Strike Motion for Summary Judgment. 10/24/19 received Objection to Motion to Strike Motion for Summary Judgment. 10/28/19 Received Appellants' Objection to Intervenor's Witness Timothy Lavelle and Accompanying Exhibit, Intervenor's Reply to Appellants' Objection to Intervenor's Witness Timothy Lavelle and Accompanying Exhibit, Intervenor's Objection to Appellants' Witness and Exhibit List. November 1, 2019 received Appellants' Reply to Intervenor's Objection to Appellants' Witness and Exhibit List. 11/4/19 issued Decision and Order on Appellants' Motion to Strike Intervenor's Motion for Summary Judgment, giving Appellants' until November 18, 2019 to reply to Motion for Summary Judgment and cancelling the hearing currently scheduled for 11/12/19.

Docket No. 19-10 WtC – Fay’s Boat Yard, Inc. Appeal

Subject: May 24, 2019 denial of Permit by Notification, File No. 2019-1444

Hearing Officer: 9/23/19 David Conley appointed by AG.

Status: June 24, 2019 received Notice of Appeal. 6/25/19 issued Insufficient Appeal letter. July 16, 2019 received Amended Petition for Appeal. 7/17/19 issued Receipt of Amended Appeal letter. 7/23/19 issued Corrected Receipt of Appeal letter. Council accepted Appeal 9/10/19. 9/10/19 Appeal Accepted letter. 9/23/19 Received Appearance of Joshua Harrison. 9/27/19 Pre-Hearing conference scheduled for 10/21/19 at 10 a.m. 10/21/19 Pre-Hearing Order scheduled hearing for December 10, 2019 at 9 a.m.

Docket No. 19-15 WtC – Town of Ossipee Appeal

Subject: July 8, 2019 Administrative Order No. 19-025 WD

Hearing Officer: 9/10/19 requested assignment of Hearing Officer. 9/23/19 David Conley appointed by AG.

Status: August 7, 2019 received Appearance of Richard Sager and Petition for Appeal. August 9, 2019 issued Receipt of Appeal letter. September 6, 2019 received Appearance of Atty. Heather Neville for the Department. Council accepted Appeal today 9/10/19. 9/10/19 Appeal Accepted letter. 9/27/19 Pre-Hearing conference scheduled for 10/21/19 at 11 a.m. 10/10/19 received State’s Motion for Summary Dismissal. 10/21/19 received Reply to Motion to Summarily Dismiss; issued Pre-Hearing Order scheduling hearing for January 14, 2020 at 9 a.m. November 6, 2019 issued Ruling regarding Motion to Summarily Dismiss.

IV. INACTIVE/STATUS LETTER OR PENDING SETTLEMENT/WITHDRAWAL

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 amendment to Administrative Order No. 18-020 WD

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: January 11, 2019 received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. Council to accept or dismiss Appeal in today’s meeting (2/12/19). Council voted to accept the Appeal on February 12, 2019. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-Hearing Conference scheduled for March 18, 2019 at 10 a.m. 2/26/19 received Appearance from Atty. Reimers. 3/1/19 received Appearance from Atty. Aslin. 3/11/19 received Petition to Intervene. 3/18/19 issued Pre-Hearing Order granting Motion to Intervene and scheduling a second Pre-Hearing Conference for May 8, 2019 at 8 a.m. April 12, 2019 issued Notice of Rescheduled Pre-Hearing Conference for June 11, 2019 at 8 a.m. June 11, 2019 issued 2nd Pre-Hearing Order Staying Appeal pending resolution of quiet title and ordering Appellant to file status update by December 16, 2019.

Docket No. 19-04 WtC (PNA) – Sagamore Landing Association and Daid and Margarete Witham Appeal

Subject: 02/25/19 Approval of Wetlands Permit #2018-03677 issued to Joan and Jon Dickinson

Hearing Officer: June 14, 2019 David Conley was appointed by AG.

Status: May 10, 2019 received Petition for Appeal, Appearance for Lynn Preston and Appearance for Bryanna Devonshire. 5/13/19 issued receipt of Appeal Letter. 5/16/19 received Appearance of John-Mark Turner for the appellants. 5/17/19 received Appellant’s Updated Service List. June 7, 2019

received Appearances from Attys. John Bosen and Bernard Pelech for the permittee. Council voted to accept Appeal June 11, 2019. 6/13/19 issued Appeal Accepted letter. 6/20/19 issued Notice of Pre-Hearing Conference scheduled for July 24th at 9 a.m. 7/3/19 received appellant's Request for Information. 7/24/19 issued Pre-Hearing Order Staying the Appeal. September 24, 2019 received Joint Status Report. 9/26/19 letter ordering parties to submit updated status report by November 22, 2019

V. MISCELLANEOUS

No items before the Council.

4. NEW BUSINESS: Mary Ann Tilton, Wetlands Bureau Assistant Administrator: Update on corrections to Wetlands Bureau Rules. Discussion held. Questions from the Council were addressed. Discussion held regarding Env-Wt. 311.07(b)(2) – Are the permanent impacts on more than one acre contiguous or not contiguous?

Sarah Yuhas Kirn, Manager, LRM: Wetlands Bureau update regarding not meeting statutory deadline of response times to permits. The Wetlands Bureau has completed the large training sessions offered regarding the rules, all modules for upcoming presentations, and staff training. The Bureau is now meeting statutory deadline of response time to permits. Discussion held. Questions from the Council addressed.

Lori Sommer, NHDES Wetlands Bureau and Cheryl Bondi, NHDES Wetlands Bureau presented the NHDES Aquatic Resource Mitigation Fund 2019 Grant Round Site Selection Committee Final Report to obtain approval for funding of six projects in the Merrimack River Service Area. Discussion held on each project. Decisions as follows:

Northeast Wilderness Trust: Discussion was held regarding members concern that a “forever wild” easement or deed restriction might prevent necessary action in response to invasive species or safety concerns. Motion made by Councilor Lievens to fully fund the Northeast Wilderness Trust \$233,700 for fee acquisition of the 130-acre Campbell Hill Preserve in Frankestown. Seconded, and passed by with one dissent.

Town of New Boston: Motion made by Councilor Lievens to fully fund the Town of New Boston \$250,000 for the Lyndeborough Road Crossing of Meadow Brook with the final design to be approved by the NHDES Wetlands Bureau to ensure full aquatic organism passage and stream simulation following the NH Stream Crossing Guidelines. Seconded, and passed by Council without dissent.

Southeast Land Trust: Motion made by Councilor Lievens to fully fund the Southeast Land Trust \$300,000 to permanently protect through a conservation easement the approximately 220-acre Murray Mill Brook property in the Massabesic Lake watershed in Auburn and Candia. Seconded, and passed by Council without dissent.

Piscataquog Land Conservancy: Motion made by Councilor Lievens to fully fund Piscataquog Land Conservancy \$300,000 and up to \$500,000 to protect through a conservation easement approximately 274 acres of land in Mason. The contingency funds are approved in order to guarantee funds for the parcel to be protected if there is a shortfall in other competitive grant sources sought this year. Seconded, and passed by Council without dissent.

Fracestown Land Trust: Motion made by Councilor Lievens to fully fund the Fracestown Land Trust \$104,108 for fee acquisition of 10.2 acres of land in Fracestown. Seconded, and passed by Council without dissent.

Town of Plaistow: Motion made by Councilor Lievens to fully fund the Town of Plaistow \$121,000 and approve an additional \$14,000 for the Pollard Rod Crossing of Seaver Brook with the final design to be approved by the NHDES Wetlands Bureau to ensure full aquatic organism passage and stream simulation following the NH Stream Crossing Guidelines. Seconded, and passed by Council with one recusal.

5. **ONGOING BUSINESS:** Review and discussion of Wetlands Council Rules.

6. **NEXT MEETING:** December 10, 2019 at 8 a.m.

7. **HEARING:** December 10, 2019 at 9 a.m., Docket No. 19-10 WtC – Fay’s Boat Yard, Inc.

8. **ADJOURNMENT:** Motion made by Councilor St. Pierre to adjourn. Seconded, and passed by Council without dissent. Meeting adjourned at 11:28 am.